

## **CHAPTER 1.**

### **GENERAL ADMINISTRATION; THE PLANNING AND ZONING COMMISSION; AND THE ZONING BOARD**

#### **100. TITLE; AUTHORITY**

This is the Huntsville Development Code. The City Council adopts this Code pursuant to the authority of the City's Home Rule Charter and of the Texas Local Government Code, including Chapters 211 and 212.

#### **101. LEGISLATIVE INTENT**

This Code does not repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. Where this Code conflicts or overlaps other regulations, whichever imposes the more stringent restrictions shall prevail.

*See also Tex.Loc.Gov't Code § 211.013.*

##### **101.1 Interpretation**

In the interpretation and application of this Code, all provisions shall be:

- (1) liberally construed in favor of the City; and
- (2) deemed neither to limit nor repeal any other powers granted to the City under state statutes.

##### **101.2 Purpose**

- (1) The purpose of this Code is for the protection of the health, safety, and general welfare of existing and future residents of the City.
- (2) This purpose is met by:
  - (a) providing the means of implementing the policies and provisions of the Comprehensive Plan;
  - (b) guiding the growth of the City, concentrating more intense development in areas with high development capability and limiting development in areas of low capability; and
  - (c) guiding, through the establishment of performance standards, the type, distribution, and intensity of development.

*See Tex.Loc.Gov't Code § 211.001, 211.004.*

### **101.3 Compliance**

All development or redevelopment shall comply fully with the provisions of this Code and the standards contained herein. Such compliance is a precondition for the issuance of any permits or approval of plats, public improvements or private improvements within the City or its extraterritorial jurisdiction.

*See Tex.Loc.Gov't Code § 212.*

## **102. THE PLANNING AND ZONING COMMISSION**

### **102.1 Creation, appointments, memberships**

- (1) The City Planning and Zoning Commission (the Commission) shall consist of seven (7) voting members appointed by the Mayor with approval of Council. Each member shall reside in the City.
- (2) The members of the Commission shall be identified by place numbers (1) through (7). The terms for Places (1), (2) and (3) shall be concurrent and end in 1997, the terms for Places (4) and (5) shall end in 1995, and places (6) and (7) shall end in 1996. All members shall be appointed for a term of three (3) years, but shall continue to act after the end of his or her term until a successor is appointed and confirmed. A member of the Commission shall be eligible for reappointment.
- (3) Should a vacancy occur, the Mayor, with approval of Council, shall appoint a person to complete the unexpired term of such position.

*See Tex.Loc.Gov't Code § 211.00, 212.006; Charter § 5.08.*

### **102.2 Meetings, officers and rules**

- (1) The Planning and Zoning Commission shall hold at least one regular meeting each month. The Commission may hold special meetings on call of the Chairperson or by a majority of the Commission.
- (2) The Commission shall elect a Chairperson and Vice-Chairperson at the first regularly scheduled meeting after the appointments each October. All members including the Chairperson shall vote in matters considered by the Commission.
- (3) The Planning Officer shall serve as ex officio (non-voting) secretary of the Commission and shall keep minutes, books, files and other records of the Commission and perform such other duties as are incidental to the office.
- (4) Any four (4) voting members of the Commission present shall constitute a quorum to conduct business.

*See Chapter 15 - Definitions (Planning Officer)*

### **102.3 Responsibilities of the Commission**

The Planning and Zoning Commission shall:

- (1) advise the City Council in the preparation and maintenance of a Comprehensive Plan and related studies;
- (2) advise the City Council in establishing criteria for development of land;
- (3) approve or disapprove, with or without variances, or decide appeals related to all minor plats, subdivision plats, development plats or other matters as established in this Code within the City and its extraterritorial jurisdiction (ETJ);
- (4) help the City Council in conducting public hearings as may be required to gather information necessary for the drafting, establishment and maintenance of the Comprehensive Plan and ordinances and regulations related to it;
- (5) initiate planning ideas and recommend policies for guiding action affecting development in the City and its environs;
- (6) recommend zoning regulations and zoning district boundaries, including proposed changes to either; and
- (7) perform other duties that may be specifically assigned to it by the City Council that relate to preparation or accomplishment of the Comprehensive Plan.

*Tex.Loc.Gov't Code. § 211.004*

### **102.4 Planning Officer**

- (1) The City Manager shall appoint a Planning Officer and may appoint a Deputy Planning Officer.
- (2) The Planning Officer or Deputy Planning Officer in the absence of the Planning Officer, shall have the following powers and duties:
  - (a) to make recommendations and provide assistance to the City Council, Planning and Zoning Commission and Zoning Board of Adjustment concerning the exercise of their responsibilities under the City's Development Code;
  - (b) to develop and recommend to the Planning and Zoning Commission and City Council, a Comprehensive Plan for the City or any amendments to the Plan and to propose actions to implement the Plan;
  - (c) to coordinate all planning relating to the City's Comprehensive Plan;
  - (d) to submit recommendation to the Planning and Zoning Commission, City Council, and Zoning Board of Adjustment on requests for zoning changes, variances and exceptions;

- (e) to render such administrative decisions as are required by the Planning Officer by the City's Development Code; and
  - (f) to perform such other duties as may be prescribed by ordinance or directed by the City Manager, or Director of Planning and Development.
- (3) If the positions of Planning Officer and Deputy Planning Officer are vacant, then the City Manager shall appoint who he deems necessary to fill the position.

### **103. THE ZONING BOARD OF ADJUSTMENT**

#### **103.1 Creation, appointments and members**

- (1) The Zoning Board of Adjustment (Zoning Board) consists five (5) voting members, and two alternate members who may vote in the absence of other members. The Mayor with approval of Council shall appoint the members. Each member shall reside in the City.

*Tex.Loc.Gov't Code § 211.008(b).*

- (2) The members of the Zoning Board shall be identified by place numbers (1) through (5). Places (1), (2), and (3) have terms that end September 30 in even years; Places (4) and (5), have terms that end in odd numbered years. All members shall be appointed for a term of two (2) years. Each member shall continue to act after the end of his or her term until a successor is appointed and confirmed.
- (3) Two alternate Zoning Board members shall attend all meetings and shall participate in the decision making process when one or more members are unable to do so. The alternate members shall be designated as alternate "A" and alternate "B".
- (4) Alternate members shall serve for the same time as regular members designated in place (4) and (5) and are subject to removal in the same manner as a regular member. A vacancy among the alternate members shall be filled in the same manner as a vacancy among the regular members.
- (5) Should a vacancy occur, the Mayor, with approval of Council, shall appoint a person to complete the unexpired term of the position.

*Tex.Loc.Gov't Code § 211.008(b); Charter § 5.08.*

#### **103.2 Meetings, officers and rules**

- (1) The Zoning Board shall elect a Chairperson and Vice-Chairperson at the first regularly scheduled meeting after the appointments each October. All members, including the Chairperson, shall vote in matters considered by the Zoning Board.

*See Tex.Loc.Gov't Code § 211.008(e).*

- (2) The Planning Officer shall serve as ex officio (non-voting) secretary of the Zoning Board and shall keep minutes, books, files and other records of the Zoning Board and perform other duties incidental to the office.

See Tex.Loc.Gov't Code § 211.008(f) (minutes).

- (3) Any four (4) voting members of the Zoning Board present shall constitute a quorum to conduct business.

*Tex.Loc.Gov't Code § 211.008(d).*

### **103.3 Responsibilities of the Zoning Board**

- (1) The Zoning Board shall hear and decide appeals where a person alleges that there is an error in an order or decision by the municipal enforcement officials in applying the standards of this Code related to the use of land or district regulations in districts established by the City (see Section 104).
- (2) The Zoning Board shall hear and decide special exceptions to the terms of the Code where this Code allows such special exceptions and to authorize in specific cases related to the use and district regulations in the districts established by the City a variance from the terms of this Code as established in Section 104.

*See Tex.Municipal Zoning Law § 10.01 (use variances illegal).*

- (3) The Zoning Board shall decide the land use category of any land use where a question exists relating to the application of the appropriate standards contained in this Code (see also Chapter 4).

*See Tex.Loc.Gov't Code § 211.009. This Board is separate and distinct from the Building Board of Adjustments and Appeals.*

## **104. APPEALS AND HARDSHIP RELIEF; PROCEDURES FOR THE PLANNING AND ZONING COMMISSION; AND PROCEDURES FOR THE ZONING BOARD**

### **104.1 Types of appeals**

Any person aggrieved by any decision of any officer, department, board or commission of the City under this Code may appeal where the person alleges that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any Development Code provision. Unless otherwise authorized by this Code, all requests for (hardship) relief shall be the responsibility of the Commission; provided, however, that variance requests about the use of land or district regulations in Districts established by the City Council shall be the responsibility of the Zoning Board. The Commission and the Zoning Board shall follow the procedures reestablished in this section and Section 105 for public notice of such proceedings.

*See also Section 210 (the City Planning Officer may grant hardship relief for minor plats).*

## **104.2 Hardship relief defined**

- (1) A hardship may exist that necessitates the granting of relief where the strict application of one or more requirements of this Code would render a parcel incapable of reasonable economic use. Specified provisions set forth in this Code may be waived or varied where, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner. A hardship is distinguished from a mere inconvenience or a desire for a greater profit. An applicant for hardship relief shall provide facts and evidence sufficient to enable the Commission or Zoning Board, as appropriate, to make findings according to the criteria set forth in this section, and to avoid conflict with the Comprehensive Plan.
- (2) An applicant may appeal or request for hardship relief by filing a notice of appeal with the City Planning Officer or City Secretary within ten (10) working days of the decision. The appealing party (applicant) shall state in the notice of appeal the nature of the interpretation appealed. The matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code. The applicant assumes the responsibility of all required notification procedures (see Section 105).
- (3) An appeal shall stay all proceedings in furtherance of the action appealed unless the Planning Officer certifies in writing to the Commission or Zoning Board, as appropriate, after the applicant files a notice of appeal, that because of the facts stated in the certificate, a stay would, in the Planning Officer's opinion, cause imminent peril to life or property. In such case, only a restraining order granted by the City Council or by a court of record on application of notice to the City Council may stay the proceedings.
- (4) The Commission or Zoning Board, as appropriate, shall fix a reasonable time for the hearing of the appeal, give public notice as established in Section 105, and decide the appeal within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.
- (5) The Zoning Board may not authorize a variance that violates a district's use classification.

## **104.3 Authority of the Commission and the Zoning Board**

- (1) Final determination of relief is vested in the Commission or Zoning Board, as appropriate, that shall:
  - (a) hear and decide appeals; and
  - (b) authorize hardship relief from the terms of the Code.
- (2) In exercising their powers the Commission or the Zoning Board, as appropriate, may, in conformity with the provisions of this Code or referenced codes, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

- (3) Hardship relief from the terms of this Code may be granted, only upon written findings by the Commission or the Zoning Board, as appropriate, that all of the following are met:
  - (a) Special conditions and circumstances exist that are peculiar to the land, structure, or building involved and that are not applicable to other lands, structures, or buildings.
  - (b) The special conditions and circumstances do not result from the actions of the applicant, nor could the condition or circumstances be corrected or avoided by the applicant.
  - (c) The relief granted is the minimum degree of relief necessary to make possible the reasonable use of the land, building, or structure according to all other applicable regulations.
  - (d) Literal interpretation of the provisions of the Code would deprive the applicant of rights commonly enjoyed by other properties under the terms of this Code and would work unnecessary and undue hardship on the applicant.
  - (e) The grant of the relief will not violate the general intent and purpose of this Code nor policies of the Comprehensive Plan.
  - (f) The grant of relief will not create unsafe conditions nor other detriments to the public welfare beyond the effects of development otherwise allowed.
- (4) A public hearing shall be held on the request for hardship relief at the next available Commission or Zoning Board meeting as appropriate after receipt of the request.
- (5) The burden of proof for approving a hardship request, a variance, or a zone redesignation is upon the applicant. The more drastic the request or the greater the impact of the proposal on the area, the greater is the burden upon the applicant. The applicant shall support any proposal by proof that it conforms to the applicable elements of the Comprehensive Plan and to applicable standards of this Code.
- (6) In granting any hardship relief, the Commission or Zoning Board may prescribe appropriate conditions and safeguards in conformity with this Code. Violation of the terms of such conditions and safeguards, when made a part of the term of the development permits or final plat shall be deemed a violation of this Code.

#### **104.4 General rules for the Commission and Zoning Board**

- (1) The concurring vote of a majority of those present for the Commission or of four members of the Zoning Board, shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Code, or to effect any variation in this Code.

- (2) Any person or persons, jointly or severally, aggrieved by any decision of the City, or any taxpayer, or any officer, department, board or commission of the City, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the district court of Walker County within ten (10) days after the filing of the decision in the office of the City Secretary.
- (3) Upon the presentation of a petition, the court may allow a writ of certiorari directed to the City to review such decision and shall prescribe the time that a return must be made and served upon the petitioner's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision being appealed, but the court may, upon application, notice to the City, and due cause, grant a restraining order.
- (4) The City shall not be required to return the original papers acted upon by it. It shall be sufficient to return certified or sworn copies of the papers or of such portions as may be called for by such writ. The City shall also provide other facts as may be pertinent and material to show the grounds for the decision appealed.
- (5) If, during the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with the findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
- (6) Costs shall not be allowed against the City unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision being appealed.
- (7) All issues in any proceedings under this section shall have preference to all civil actions and proceedings.

*See Section 103; see generally Tex.Loc.Gov't Code § 211.009.010.*

## **105. ADDITIONAL PUBLIC NOTICE PROCEDURES; DECISIONS REGARDING ZONING REGULATIONS**

The purpose of this section is to establish the minimum requirements for notice with respect to procedural actions required elsewhere in this Code and amendments to the Zoning District Map.

### **105.1 Notice of public hearing**

The applicant or city shall give notice of public hearing as established below. Amendments to the Official Zoning Map and appeals for modifications or variance in the Code require notice. Where the public hearing is at the request of a private individual or developer (applicant), the applicant shall carry out the provisions of this section. Where the Commission or the City



Council initiates the public hearing, the Planning Officer shall carry out the provisions of this section.

- (1) Notice shall be given by publication of a legal notice in a newspaper of general circulation at least fifteen (15) days before the date of the hearing; provided, however, this Code does not require publication of a legal notice for variances related solely to development permitting or subdivision platting.

*See Tex.Loc.Gov't Code § 211.006(a)*

- (2) Adequate notice of the public hearing shall be provided to adjacent property owners. Notice of a public hearing shall be reasonably calculated to give actual notice and shall consist of the following:

- (a) Mailed Notice

The applicant shall provide satisfactory evidence to the Commission or the Zoning Board, as appropriate, of mailing the required notice to the adjacent property owners. Notice shall be mailed at least 15 days before the scheduled public hearing. Unless otherwise provided, the applicant shall obtain the addresses for the mailed notice required by this Code from the City's property tax records. All property tax owners within 200 feet and all owners of residentially-designated property within 500 feet shall be notified by mail. Unless the address is on file with the City, a person whose name is not in the tax records at the time of filing of an application, or of initiating other action not based on an application, need not be furnished mailed notice. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this section. The written notice shall contain the following information:

- 1) the date, time, and place of the hearing;
    - 2) a description reasonably calculated to inform a person of the location of the property for which a permit, plat, or other action is pending, including but not limited to use of a map or postal address and a subdivision lot and block designation, a metes and bounds description or the tax map designation of the County Appraisal District;
    - 3) the sections of this Code that are pertinent to the hearing procedure; and
    - 4) That the written documents may be examined and written comments accepted during normal business hours in the office of the Community Development Division at the City Service Center.

- (b) Procedure for Posted Notice

At least ten (10) days before the date of the hearing, the applicant shall cause to be placed on the land affected by the modification or variance a sign or signs indicating the type of relief sought or the proposed change in status of the property and the day and time of

review. The signs shall be placed at not more than three hundred (300) foot intervals across the property line fronting on existing streets and must be clearly visible from the street. Each sign shall be no greater than ten (10) feet from the property line and shall be no smaller than eighteen (18) inches by twenty-four (24) inches.

*See generally Tex.Loc.Gov't Code § 211.006, 212.105(b).*

## **105.2 Notice requirements defined**

Interpret the requirements for notice, posting, and publication contained in this section as follows:

- (1) Notice by certified or regular mail shall refer to the date of deposit of the mail with the U.S. Post Office.
- (2) Posting shall refer to the posting or equivalent display of at least one (1) notice in a prominent, visible location on or near the subject property.
- (3) Publication shall refer to the date of publication of a legal notice in the official newspaper of the City. One (1) publication day shall be sufficient.
- (4) Affected owners and other interested persons shall be determined according to the current tax rolls of the City.
- (5) Each notice, whether by mail, posting or publication, shall include appropriate information about the general nature of the decision to be made, identity of the applicant (where applicable), the subject property (where applicable), the time and place of the meeting or hearing, and the address and telephone number of the office from which additional information may be obtained.

## **106. COMPREHENSIVE PLAN**

The Comprehensive Plan shall include the City's Capitol Improvement Plans for streets, parks, public buildings, water, sewer and drainage, its development and building ordinances and all similar documents prepared or used by the City Council for planning.

## **107. CONFLICT OF INTEREST**

- (1) No person may participate as a member of the Commission or the Zoning Board in any decision on any matter concerning real property pending before the Commission or Board if the person has a substantial interest in the real property.
- (2) If a member of the Commission or Zoning Board has a substantial interest in a business entity or in real property, the official shall file an affidavit with the City Secretary stating the nature and extent of the interest before any vote or decision of the Commission or Zoning Board on any matter involving the business entity or real property if: